

§ 85B-4.4. Response and defense by Commission and judgment debtor; proof of conversion or other fraudulent act.

(a) When the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend action on behalf of the Fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may personally defend the action and shall have recourse to all appropriate means of defense, including the examination of witnesses. Within 30 days after service of the application, counsel for the Commission and the judgment debtor may file responses setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the Fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application or the judgment referred to does not form a basis for meritorious recovery under G.S. 85B-4.2, that the applicant has not complied with the provisions of this Article, or that the liability of the Fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing.

(b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving the cause of action for conversion of funds or property or other fraudulent conduct. Otherwise, the judgment shall create a rebuttable presumption of conversion or other fraudulent conduct. (1991 (Reg. Sess., 1992), c. 819, s. 8.)